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HOUSE BILL 628

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO OCCUPATIONAL HEALTH AND SAFETY; CLARIFYING RIGHT OF ENTRY AND INSPECTION; CLARIFYING PRIVATE QUESTIONING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 50-9-10 NMSA 1978 (being Laws 1972, Chapter 63, Section 9, as amended) is amended to read:

"50-9-10. RIGHT OF ENTRY AND INSPECTION--COMPLAINTS--CONSULTATION--NOTIFICATION.--

A. In order to carry out the purposes of the Occupational Health and Safety Act, the department's authorized representatives, upon presenting appropriate credentials to the owner, operator or agent in charge, are authorized to and may:

(1) enter and inspect any place of employment at reasonable times and without delay; and

(2) question privately the employer and

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1 employees and [to] inspect and investigate, during regular
2 working hours and at other reasonable times and within
3 reasonable limits and in a reasonable manner, the place of
4 employment and all pertinent conditions, structures, machines,
5 apparatus, devices, equipment and materials therein. [The
6 department's representative is not authorized to question
7 privately the employer or employees until the board has adopted
8 regulations protecting the rights of such employer and
9 employees.] Legal counsel for the party being questioned may be
10 present during private questioning, provided that the same
11 legal counsel does not represent both the employer and
12 employee.

13 B. Any employee or representative of employees may
14 file a written complaint with the department concerning any
15 alleged violation of a regulation or any hazardous condition.
16 A copy of the complaint shall be provided to the employer at
17 the time of the inspection. However, upon the request of the
18 complainant, the complainant's name shall not appear on the
19 copy. The department shall investigate the complaint and
20 notify the complainant and employer in writing of the results
21 of the investigation and any action to be taken. If no action
22 is contemplated, the department shall notify the complainant
23 and include in the notice the reasons therefor. The department
24 shall provide for the informal review of decisions not to take
25 compliance action at the request of the complainant. The

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1 review shall not be by those who investigated the complaint.

2 C. In order to aid inspections, a representative of
3 the employer and a representative authorized by employees shall
4 be given an opportunity to accompany the department inspector
5 during the physical inspection of the work place. If there is
6 no authorized employee representative, the department inspector
7 shall consult with a reasonable number of employees.

8 D. Prior to or during any inspection of a work
9 place, any employees or representative of employees employed in
10 [~~such~~] the work place may notify the department or the
11 department inspector in writing of any violation of the
12 Occupational Health and Safety Act [~~which~~] that they have
13 reason to believe exists in [~~such~~] the work place. The
14 department shall establish procedures for informal review of
15 the decision made by the inspector, and, if no citation is
16 issued with respect to the alleged violation, it shall furnish
17 the employee requesting [~~such~~] the review a written statement
18 of the reasons for the department's final disposition of the
19 case.

20 E. If an inspection reveals that employees are
21 exposed to toxic materials or harmful physical agents at levels
22 in excess of those prescribed by regulations of the board, the
23 department shall provide the employees with access to the
24 results of the inspection. The employer shall promptly notify
25 the employees who are being exposed to the agents or materials

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1 in excess of the applicable regulations and inform them of the
2 corrective action being taken or that review has been requested
3 in accordance with Section 50-9-17 NMSA 1978.

4 F. It is unlawful for any person to give advance
5 notice of any inspection to be conducted under the Occupational
6 Health and Safety Act without the written approval of the
7 secretary or the secretary's authorized representative.

8 G. The board shall adopt regulations to implement
9 this section."